

# **EXHIBIT A**

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 2284CV00001

BOSTON POLICE SUPERIOR OFFICERS  
FEDERATION; BOSTON POLICE DETECTIVES  
BENEVOLENT SOCIETY; and BOSTON  
FIREFIGHTERS UNION, LOCAL 781,  
INTERNATIONAL ASSOCIATION OF FIRE  
FIGHTERS, ALF-CIO,

Plaintiffs,

v.

MICHELLE WU, in Her Official Capacity as Mayor  
of the City of Boston and CITY OF BOSTON,

Defendants.

**Affidavit of Dr. Bisola Ojikutu, M.D., M.P.H.**

Dr. Bisola Ojikutu, M.D., M.P.H., hereby deposes and states as follows:

1. My name is Dr. Bisola Ojikutu. I am Executive Director of the Boston Public Health Commission, a position that I have held since September, 2021. My curriculum vitae is attached hereto as Exhibit A and incorporated herein by reference. I make this affidavit on my personal knowledge, on records of the City of Boston and the Boston Public Health Commission and on studies and other research generally accepted as reliable in the fields of public health and infectious disease.

2. The current administration has continued to be guided by the BPHC and relies on scientific and real-time data in determining how best to respond to the ongoing pandemic. In fact, upon taking office, Mayor Michelle Wu established a COVID-19 Advisory Committee, which I chair.

3. Upon my arrival at the BPHC, the City began to prepare for its second winter of the public health crisis caused by the COVID-19 pandemic. At that time, it also began to prepare for cold and influenza season.

4. BPHC's Infectious Disease Bureau closely monitors influenza surveillance data and, at the time of the decision to amend the August Policy, namely the weeks leading up to December 20, 2020, preliminary data demonstrated a likelihood of a more active influenza season than usual, placing further strain on both the City workforce as well as Boston's healthcare system.

5. At the same time as the City was observing an increase in influenza cases, a new variant of COVID-19, Omicron, began to emerge.

6. The BPHC regularly monitors data from the World Health Organization ("WHO"), the Center for Disease Control ("CDC"), Massachusetts Department of Public Health ("MDPH") the Massachusetts Water Resources Authority ("MWRA"), local surveillance data, and various sources of other public health data, analysis, and research.

7. In December, it became clear this new variant appeared to be more contagious than previous variants and was rapidly spreading based on data from South Africa and then the United Kingdom. The BPHC reviewed all relevant data including epidemiological modeling that demonstrated the spread of the Omicron variant was likely to be significant and rapid.

8. Based on the pace of the spread of Omicron in the first half of December throughout the globe, including in the United States and in Massachusetts, it became clear that this surge could coincide with a surge of expected COVID-19 cases following the Christmas and New Year Holidays. Based on knowledge in my field about the seasonality of infectious disease similar to COVID-19, as well as the now twenty-two months of this pandemic, I and my advisors at BPHC anticipated a significant increase in COVID-19 cases during and following the holiday season marked by family gatherings, social gatherings, and increased amounts of time spent indoors in general.

9. The expectation of an impending surge of a highly-contagious variant timed with an anticipated active influenza season and the likelihood of a post-holiday and seasonal increase in cases resulted in the City's administration consulting with the BPHC regarding what measures could be taken to maintain a safe workplace for City employees, ensure essential services continued to be available to the public, and to protect the public the City serves, particularly the most vulnerable.

10. The number of new individuals being vaccinated had begun to drop off in late fall. This is despite efforts made by the BPHC and the City to conduct ongoing public education campaigns, vaccination clinics and a variety of other interventions to encourage voluntary uptake of vaccinations. See BPHC Weekly Vaccination Report at p. 2-3 available at [https://bphc.org/whatwedo/infectious-diseases/Documents/Vaccine%20Reports/Boston\\_COVID-19\\_Vaccination\\_Report\\_07Jan2021.pdf](https://bphc.org/whatwedo/infectious-diseases/Documents/Vaccine%20Reports/Boston_COVID-19_Vaccination_Report_07Jan2021.pdf).

11. In my role as the relevant Mayoral Cabinet member for issues related to public health, I routinely advise members of the City of Boston's Cabinet and other senior officials regarding public health related policy questions, including the employee vaccination policy. BPHC, relying on data and information from the CDC, MA DPH, and BPHC, as well as other sources of relevant public health data and analysis, advised the City that a vaccine mandate was a necessary and effective action to protect its employees, provide a safe workplace, ensure the continued provision of public services, and protect the public.

12. Both at the time the policy decision in question was made and currently, we were aware that although COVID-19 testing is an important tool to ensure that those who are infected can isolate and prevent further spread of the disease, testing alone is not sufficient to

prevent the spread of the virus. Vaccination is the most important tool to prevent serious infections, hospitalizations, and death. *See, e.g.,* United States Centers for Disease Control and Prevention, COVID-19 Vaccines Work available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html>. Vaccination rates are among other key metrics BPHC and other members of the City Administration regularly follow on the COVID-19 Data Dashboard that allows timely data to be used to inform COVID-19 policy and programmatic interventions.

13. Given this knowledge, it was my opinion and belief that continuing the practice of allowing employees to get tested rather than get vaccinated was insufficient to prevent transmission of COVID-19 in the context of the Delta, Omicron, and future variants, or suppress the spread of COVID-19 among City employees during the anticipated seasonal surge.

14. In my opinion, which is informed by data and the expertise of the public health professionals at BPHC and elsewhere, as well as the best available medical and public health data, it was clear that it is critical to ensure employees and the public are vaccinated rather than merely tested on a weekly basis. COVID-19 testing, while useful, is a point-in-time measure of infection and testing once per week does not sufficiently ensure that an unvaccinated individual does not have COVID-19 at all other points in time during the week. While testing can help detect infection, it cannot prevent infection. Preventing COVID-19 infection among employees is critically important for the reasons stated herein.

15. It is widely accepted in the infectious disease medicine and public health fields that individuals who are vaccinated are less likely to contract COVID-19 than those who are not. *See* United States Centers for Disease Control and Prevention, COVID-19 Vaccines Work available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html>. As of January 4, 2022, 80.7% of Boston residents have had at least one dose of vaccination, but only 69.3% are fully vaccinated. [https://bphc.org/whatwedo/infectious-diseases/Documents/Vaccine%20Reports/Boston\\_COVID-19\\_Vaccination\\_Report\\_07Jan2021.pdf](https://bphc.org/whatwedo/infectious-diseases/Documents/Vaccine%20Reports/Boston_COVID-19_Vaccination_Report_07Jan2021.pdf).

16. In addition, the current data, research, and analysis indicate that if persons who are vaccinated do contract COVID-19, their viral load is significantly lower than that of infected individuals who are unvaccinated. This lower viral load results in vaccinated individuals shedding less virus and for a shorter duration of time, thus reducing the likelihood they will infect others.

17. Because vaccination reduces the risk of serious illness, it reduces the strain on the City and BPHC workforce which provides critical services to city residents. Vaccination reduces the risk of serious illness, it also reduces, on average, the period of time for which employees that do contract COVID-19 are symptomatic, allowing a sooner recovery and return to service.

18. Those who are vaccinated are significantly less likely to develop serious health complications from COVID-19, including hospitalization and death.

19. While a majority of Massachusetts and Boston residents are vaccinated, the great majority of serious COVID-19 illness and hospitalization in the state and city is among unvaccinated individuals.

20. By requiring vaccinations of all City employees, the City reduces the likelihood that there will be "clusters" and/or workplace spread of COVID-19.

21. By requiring vaccines, the City reduces the likelihood of spread of COVID-19 from City employees to the populations it serves.

22. Those requiring public services, in particular those provided by the employees Plaintiffs represent, do not have an option in most instances regarding whether to seek such services and/or to interact with these City employees. Police and Fire services often require these City employees to enter the homes of citizens or have extremely close contact with citizens, including vulnerable populations such as the elderly, children who cannot be vaccinated, and/or citizens who have compromised immune systems. Accordingly, by ensuring its employees are vaccinated, the City significantly reduces health and safety risks to the public requiring such services.

23. Because vaccinations significantly reduce the likelihood that someone who contracts COVID-19 will be hospitalized, requiring vaccination prevents further burden of the health care system. Even if the Omicron variant tends to cause less severe illness, as is being evaluated by the public health community, the sharp increase in cases results in increases in hospitalizations, as shown in the hospitalization and hospital capacity metrics BPHC follows. Throughout the pandemic, preserving hospital capacity has been an overarching imperative that has informed emergency interventions and employment protections.

24. Based on the above and all available data currently available, it is the position of the BPHC that the vaccination of all City employees is a necessary part of a medically sound and necessary public health strategy in the City to combat the spread and severity of COVID-19. Vaccination protects both employees and members of the public by reducing transmission of the disease and moderating the severity of symptoms in those who contract it. These factors are necessary both to protect the public and employees from COVID-19 but also to maintain a healthy workforce necessary to deliver the services that the public requires from municipal employees.

25. Since the announcement of the December Policy, data has unfortunately validated these concerns identified by my agency and the City in December 2021 and has firmly underscored the need to take action to prevent the spread of COVID-19 in the City workforce and more broadly.

26. Since early on in the pandemic, the BPHC has monitored the same six metrics in tracking the spread and risk of COVID-19 to our communities. These were publicly announced on November 20, 2020, during a press conference that included at least twenty media outlets; they have been available on the BPHC's webpage since at least January 21, 2020.

27. These metrics include:



- New Positive Tests for COVID-19 in Boston Residents: This document the number of cases the City is seeing each day and how quickly COVID-19 is spreading in Boston
- Number of COVID-19 Molecular Tests Performed: This aids the BPHC in understanding whether the City is performing a consistent amount of testing among Boston residents.
- COVID-19 Emergency Department Visits to Boston Hospitals: This metric looks at the broader impact of COVID-19 on hospital emergency departments.
- Adult COVID-19 Hospitalizations. This metric helps us understand the burden of serious COVID-19 cases among adults resulting in inpatient care in Boston hospitals. It includes the total number of adult hospitalizations among Boston and non-Boston residents for COVID-19.
- Percentage of Non-Surge Adult ICU Beds Occupied at Boston Hospitals: This tells the BPHC how full Boston hospital adult ICUs are and indicates when hospitals may need to start using surge beds to care for patients.

See <https://analytics.boston.gov/app/boston-covid>.

28. These thresholds are important in that they all the BPHC to understand when and where it needs to recommend policy and programmatic interventions, including emergency orders and changes to workplace COVID-19 protections.

29. At the time of the policy decision in question, there was clear evidence in the metrics that COVID-19 continues to cause serious harm to the public health of the City of Boston. As of December 17, 2021, 78.8% of the total Boston resident population had received at least one vaccination dose and 68.4% of Boston the total Boston population was fully vaccinated. 86.6% of the Boston resident population over the age of 12 had received at least one vaccination dose and 75.7% of the population over the age of 12 was fully vaccinated. Significantly, the positive test rate in Boston had reached 6.7%, up from a low of 0.4% in late June, 2021 and above the Commission's 5% threshold of concern.

30. Now, as of January 4<sup>th</sup>, 2022, the positivity rate has reached 31.9%. As of December 7, the percentage of occupied adult non-surge ICU beds had reached 94.5%, approaching the Commission's 95% threshold of concern. The fact that the course of the pandemic and local public health metrics have worsened considerably since the revised policy was announced further underscores the need for these workplace safety precautions to be implemented without delay.

31. At the same time that the modification to the City employee vaccination policy was determined, I issued an emergency public health order to require individuals entering any dining, entertainment, or fitness establishment in Boston to be vaccinated against COVID-19. In addition to these policy interventions, BPHC is working in collaboration with other City agencies and other partners to ensure that vaccination and testing is available to meet the surge in need accompanying the present state of the pandemic. These efforts will continue to be focused on frontline City employees. Specifically, BPHC is offering a vaccination clinic for Boston Fire Department and Boston Police Department at Boston Fire Department Headquarters throughout the current week.

Employees are encouraged to avail themselves of these and other vaccination clinics offered by the Boston Public Health Commission. See Ojikutu Press Statements December 20, 2021 attached as Exhibit 2.

Signed under the pains and penalties of perjury this 10<sup>th</sup> day of January, 2022:

A handwritten signature in black ink, appearing to read "Bisola Ojikutu".

Dr. Bisola Ojikutu, Executive Director  
Boston Public Health Commission